

**BEFORE THE CONSUMER DISPUTES REDRESSAL FORUM
ERNAKULAM**

**Complaint Case No. CC/19/178
(Date of Filing : 02 May 2019)**

1. V P ASOKAN

VELIKKAKATH H PANANGAD ERNAKULAM

.....Complainant(s)

Versus

1. M/S CARRIER AC COMPANY

DELHI-JAIPUR HIGHWAY NARSINGPUR

GURUGRAMHARYANA

.....Opp.Party(s)

BEFORE:

HON'BLE MR. D.B BINU PRESIDENT

HON'BLE MR. RAMACHANDRAN .V MEMBER

HON'BLE MRS. SREEVIDHIA T.N MEMBER

PRESENT:

Dated : 20 Jul 2023

Final Order / Judgement

DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION ERNAKULAM

Dated this the 20th day of July,

2023

Filed on: 02/05/2019

PRESENT

Shri.D.B.Binu

President

Shri.V.Ramachandran

Member

Smt.Sreevidhia. T.N

Member

C.C. NO 178/2019

Between

COMPLAINANTS

1. V.P.Ashokan, Velikkakath House, Panangad P.O., Ernakulam,

2. Rokha D,W/o.V. P. Ashokan, Velikkakath House, Panangad P.O., Ernakulam.

VS

THE OPPOSITE PARTIES

1. Carrier AC Company, Carrier Airconditioning & Refrigeration Ltd., Delhi-Jalpur Highway, Narsingpur, Gurgaon, Haryana-122 001, India.
2. Star Technologies, Servicing Centre of Carrier AC, 32/2977- A3 1st floor, Opp. Anchumury Bus Stop, Next to Catholic Syrian Bank, Ponnurunni, Vyttila P.O., Cochin-682 019.
3. Bismi Appliances, Panicker's Foundation, Pettah Jn, Poonithura.

(Rep. by Adv. T.J. Lakshmanan, Megha Arcade, Power House road, Kochi 682018)

FINAL ORDER

DB.Binu, President:

1. A brief statement of facts of this complaint is as stated below:

The complaint is filed under Section 12 (1) of the Consumer Protection Act, 1986. The brief facts, as averred in the complaint, are that the first complainant purchased an air conditioner (A/C) from the third opposite party on September 10, 2016, for Rs. 32,900/-. After two years of usage, they experienced a water leakage problem where a few drops of water came directly into the room from the A/C, causing the bed and clothes to become wet. Sometimes, the A/C even sprayed water. The complainant immediately informed the company, and two servicemen from Vyttila Service Centre of Carrier A/C (Star Technologies) were sent to repair it. They charged Rs. 250 as a service fee but were unable to find the issue, stating it was a manufacturing defect.

Two more servicemen were sent but they also could not repair the A/C. The complainant contacted the company and was told that if an amount of Rs.2,650 is paid as gas-filling charge, the company would replace some parts of the A/C to resolve the problem. The complainant agreed and paid the amount, but after a few months, the problem recurred. Three more servicemen from the Vyttila service centre were called independently, and Rs. 250 was paid as a service charge, but they couldn't repair it either.

Contacting the service centre again, the company stated that replacement was not easy and asked for an additional Rs. 2,650 as a gas refilling charge for repairs. The complainant sent a mail to the company on March 25, 2019, and received the phone number of another serviceman from the Vyttila service centre. However, the serviceman did not come, and the problem remained unresolved.

The complainant expressed frustration at the wastage of time and money, as well as the ridicule from relatives for buying such an A/C. They highlighted the inconvenience caused by taking leaves from work for the servicemen's visits and the need to move furniture for repairs. Due to the risk of isotonic water droplets falling into their mouths, the complainant stopped using the A/C.

The complainant requested the commission to take action against the company and order the replacement of the A/C. They also sought compensation of Rs. 1,00,000 for the losses incurred.

2. Notice

Notices were issued by the Commission to the opposite parties in response to the complaint. The opposite parties received the notices, and the third opposite party submitted their version. However, the first and second opposite parties did not file a version, resulting in them being considered as ex parte by the Commission.

3. THE VERSION OF THE 3rd OPPOSITE PARTY

The first complainant visited their showroom and purchased an air conditioner (A/C) manufactured by the first opposite party. They claim that the complainant willingly chose and bought the A/C after carefully inspecting the product and being aware of its make, performance, quality, and after-sales service. The responsibility for servicing the product lies with the manufacturer and not with the third opposite party, who is merely a dealer and did not provide any warranty or after-sales service for the A/C.

The complainants themselves contacted the manufacturer regarding the alleged defect, and service personnel were sent as a result. They emphasize that they have no knowledge of any communications or transactions between the complainants and the manufacturer or the second opposite party. Even if there is a manufacturing defect, they assert that it is the duty of the first opposite party (the manufacturer) to rectify it, and the dealer (third opposite party) cannot be held liable for manufacturing defects according to a precedent set by the Hon'ble Supreme Court.

The third opposite party contends that there is no deficiency in their service or unfair trade practice, and the complainants themselves are aware of this fact, as they did not seek any relief from the third opposite party. They argue that they are not responsible for manufacturing defects as they are only a dealer of the A/C, not the manufacturer.

Furthermore, the third opposite party claims that the complainants have not presented any substantial evidence to prove the alleged defect requires a complete replacement. Therefore, they request the commission to dismiss the complaint filed against them and award them with costs.

4) Evidence

The complainant had produced proof affidavit and 4 documents that were marked as Exhibits A-1 to A-4.

5) The main points to be analysed in this case are as follows:

- i) Whether the complaint is maintainable or not?
 - ii) Whether there is any deficiency in service or unfair trade practice from the side of the opposite parties to the complainant?
 - iii) If so, whether the complainant is entitled to get any relief from the side of the opposite parties?
- iv) Costs of the proceedings if any?

6) The issues mentioned above are considered together and are answered as follows:

The complainant submitted that he purchased the air conditioner (A.C.) from Bismi Appliances on September 10, 2016, for a total of Rs. 32,900, including a stabilizer. The bill for the purchase is presented as Exhibit A1. Within the first year, they availed of the two free services offered by the company. However, after one and a half years of usage, a water leakage problem occurred, with drops of water coming directly from the A.C. into the bedroom and wetting the bed and bedsheets. The complainants informed Carrier A.C. through customer care, and two servicemen from the Vytilla service center (Star Technologies) were sent for repairs, charging Rs. 250 as a service fee.

The first repair attempt was unsuccessful, and two more servicemen came, confirming that it was a manufacturing defect. They were also unable to fix the issue. The complainants contacted the company again, and it was suggested that they pay Rs. 2,650 as a gas filling charge for replacing some A.C. parts. The bill for this payment is presented as Exhibit A2. However, after five months, the leakage problem recurred. Three independent servicemen were called from the Vytilla service centre, and Rs. 250 was paid as a service charge (Exhibit A3), but the issue remained unresolved.

Communication with the company through email was established, and all relevant email exchanges containing photographs and bills were submitted as Exhibit A4. The company apologized and provided a service helpline number, but no one responded after contacting the number. During this time, the complainants had difficulties using the A.C. due to their son's allergic problem, and they faced an additional issue with the sim motor not working, causing problems with the A.C.'s cooling direction. Another serviceman, Mr. Shamin, from the Vytilla service center, mentioned that a rat had damaged the sim motor by entering through the drain water hole, indicating a previous technician's mistake of not closing the hole.

The complainants emphasize that the third opposite party, Bismi Appliances, is partially responsible for the difficulties caused as they recommended the A.C. purchase, and thus, they deny the claims made in the version filed by Bismi Appliances. The counsel argues that it is a manufacturing defect, and Carrier A.C. company should be held responsible for the issues faced by the complainants.

The first and second opposite parties' conscious failure to file their written version in spite of having received the Commission's notice to that effect amounts to an admission of the allegations leveled against them. Here, the case of the complainant stands unchallenged by the above opposite parties. We have no reason to disbelieve the words of the complainant against the opposite parties. **The Hon'ble National Commission held a similar stance in its order dated 2017 (4) CPR page 590 (NC).**

In the present case, the complainants have provided sufficient evidence to establish their claims against the opposite parties. The complainants purchased an air conditioner (A.C.) from the third opposite party and faced recurring issues with water leakage and malfunctioning of the sim motor. The complainants promptly informed the company, and several servicemen were sent to repair the A.C., but the problems persisted. The complainants also paid additional charges for gas filling and service fees but did not receive a satisfactory resolution.

Upon analyzing the evidence and arguments presented, this Commission concludes that the complainants have established the following:

1. **Manufacturing Defect:** The recurring problems with water leakage and sim motor malfunction strongly indicate a manufacturing defect in the A.C. The multiple attempts to repair the A.C. by different servicemen, as well as the acknowledgment of a manufacturing defect by the second set of servicemen, further support this conclusion.
2. **Deficiency in Service:** The opposite parties failed to provide adequate service in addressing the complainants' issues. Despite the complainants' timely reporting of the problems, the opposite parties were unable to effectively repair the A.C. The complainants were made to endure multiple visits by servicemen, pay service charges, and face inconvenience, mental agony, and financial losses due to the ineffective service provided.
3. **Liability of the Opposite Parties:** The opposite parties, being the manufacturer and service provider respectively, hold the responsibility for the manufacturing defects and deficiency in service. The arguments presented by the third opposite party, claiming that they are not liable as a dealer, are not tenable. As the responsible entities involved in the supply chain, the first and second opposite parties cannot escape their liability for the defects and failures in the A.C.
4. The first and second opposite parties' failure to respond and present their version has worked in favor of the complainants. Based on the evidence, and applicable case laws, this Commission finds the opposite parties liable for the complainants' grievances and grants the requested reliefs.

In the case of **Nachiket P. Shirgaonkar v/s Pandit Automotive Ltd. & Another (R.P No. 3519 of 2006 in Appeal No. 1953 of 2005)**, the **Honorable National Consumer Disputes Redressal Commission** made an observation regarding the recurring defect of a product. They stated that if a vehicle requires frequent repairs within a short span of one year after purchase, it is not deemed necessary for a new car to undergo such repairs multiple times. This observation emphasizes the expectation of a new product to be free from recurring defects and the responsibility of the manufacturer to provide a reliable and functional product.

In the case of **Hindustan Motors v. Shivakumar and Ors (2000 10 SCC 654)**, the **Hon'ble Supreme Court** addressed the issue of liability for manufacturing defects. The Court held that a dealer cannot evade responsibility for such defects, as it is the duty of the manufacturer to rectify them. This ruling establishes the principle that dealers, as part of the supply chain, cannot escape liability for defects in the products they sell. They are obligated to ensure that the products they distribute are free from manufacturing defects and provide appropriate after-sales service. Therefore, if a product sold by a dealer exhibits manufacturing defects, the dealer can be held liable along with the manufacturer for providing appropriate remedies and compensation to the aggrieved consumer.

The opposite party's inadequate service caused a deficiency, negligence, and failure to meet the complainant's expectations. This resulted in the complainant's mental agony, hardship, and financial loss. These actions demonstrate the opposite party's callousness, negligence, and poor service quality, making them fully responsible.

The dealer has also a legal obligation to assist and facilitate the repair work of the AC, particularly considering the significant amount collected from the consumer. The dealers have a duty to provide adequate after-sales service and support for the products they sell, especially when substantial amounts are involved.

We find the issue Nos. (I) to (IV) in favour of the complainant for the serious deficiency in service that happened on the side of the opposite parties. Naturally, the complainant had suffered a lot of inconvenience, mental agony, hardships, financial loss, etc. due to the negligence on the part of the opposite parties.

In light of the circumstances, the following orders are issued:

- I. The Opposite Parties shall replace the defective A/C with a new unit that is free from manufacturing defects to the complainant.
- II. The Opposite Parties shall pay Rs 15,000/- as compensation to the complainants for the agony, hardships, and financial losses due to the opposite parties' negligence and deficiency in service.

- III. The Opposite Parties shall also pay the complainant Rs. 5000/- towards the cost of the proceedings as the complainants have been forced to seek legal recourse to obtain their rightful relief.

The Opposite Parties be jointly and severally liable for the above-mentioned directions which shall be complied with by the Opposite Parties within 30 days from the date of the receipt of a copy of this order. Failing which the amount ordered vide (i) and (ii) above shall attract interest @9% from the date of receipt of a copy of this order till the date of realization.

Pronounced in the Open Commission on this the 20th day of July,2023

Sd/-

D.B.Binu President

Sd/-

V.Ramachandran Member

Sd/-

Sreevidhia TN., Member

Forwarded by Order

Senior Superintendent

APPENDIX

COMPLAINANT'S EVIDENCE

- Exhibit A-1: Copy of retail invoice dated 10/09/2016
- Exhibit A-2: Copy of cash receipt dated 19/06/2018
- Exhibit A3: Copy of cash receipt dated 08/03/2019
- Exhibit A4: Copy of e-mail communication between the complainant and opposite party and photographs (series)

OPPOSITE PARTY'S EVIDENCE

Nil

Despatch date:

By hand: By post

kp/

CC No. 178/2019

Order Date: 20/07/2023

**[HON'BLE MR. D.B BINU]
PRESIDENT**

**[HON'BLE MR. RAMACHANDRAN .V]
MEMBER**

**[HON'BLE MRS. SREEVIDHIA T.N]
MEMBER**